

**United States Department of Labor
Employees' Compensation Appeals Board**

G.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

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**Docket No. 21-1196
Issued: March 16, 2022**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 2, 2021 appellant, through counsel, filed a timely appeal from a June 22, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted September 18, 2020 employment incident.

FACTUAL HISTORY

On November 23, 2020 appellant, then a 40-year-old assistant rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2020 she sustained a lower back injury when a chair she was sitting in suddenly dropped down while in the performance of duty.³

In a November 11, 2020 statement, appellant indicated that on September 18, 2020 she was assigned to answer telephones. She explained that the chair that she initially sat on was very uncomfortable and, as she was trying to get comfortable in it, the chair suddenly moved back and she felt a disc in her back move. Appellant noted that she switched to sit in a different chair when the chair slowly started dropping down and she felt a disc in her back move again. She indicated that she stopped work and sought medical treatment on the alleged date of injury.

In a November 27, 2020 letter, the employing establishment controverted appellant's claim. It contended that the current claim was not a new injury, but was related to appellant's previous back injuries sustained on June 23, 2019 and April 19, 2020.

In a November 30, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a September 18, 2020 emergency room report, Dr. Anitricia Lumpkin, an osteopath, Board-certified in emergency and internal medicine, recounted that on September 18, 2020 appellant "tweaked" her back when she sat on a low chair at work. She noted that appellant had a history of back injury and described the June 23, 2019 and April 19, 2020 work incidents. Dr. Lumpkin reported physical examination findings of normal range of motion and no tenderness. She indicated that a lumbar spine magnetic resonance imaging (MRI) scan showed degenerative disc disease at L5-S1 and no suspicious osseous lesion. Dr. Lumpkin assessed degenerative disc disease at L5-S1. Emergency room discharge instructions noted diagnoses of back pain and lumbar degenerative disc disease.

³ OWCP assigned the present claim OWCP File No. xxxxxx425. Appellant has a previously accepted traumatic injury claim related to a June 23, 2019 employment incident. OWCP assigned that claim OWCP File No. xxxxxx684 and accepted it for lumbar back strain. Appellant also previously filed a traumatic injury claim under OWCP File No. xxxxxx088 for a back injury related to an April 19, 2020 employment incident. Appellant stopped work on that date and accepted a full-time, limited-duty position on September 17, 2020. By decisions dated July 20 and November 24, 2020, and June 22, 2021, OWCP denied the claim.

In a September 21, 2020 after visit summary note, Dr. Shabnam Guard, Board-certified in family medicine, noted the appellant was seen for back pain, unsteady gait, muscle weakness, and numbness/tingling sensation of the skin.

In a September 21, 2020 return to work note, Dr. George Thomas, a family medicine specialist, reported that appellant was seen in his office on that date and advised that she could return to work on September 28, 2020.

OWCP also received a letter from Dr. Thomas dated July 2, 2020 who described appellant's June 23, 2019 and April 19, 2020 back injuries and the medical treatment that she had received. He explained that a lumbar spine MRI scan demonstrated increased loss in disc height in L5-S1, a mild broad-based disc bulge, and mild left foraminal narrowing. Dr. Thomas recommended that appellant's activities be limited to sitting and lifting up to 10 pounds.

In an epidural steroid injection procedure note dated October 1, 2020, Dr. Jacob Vella, Board-certified in pain management and anesthesiology, noted a diagnosis of lumbar radiculitis.

An October 19, 2020 lumbar spine MRI scan report demonstrated minimal right and mild left facet disease with minimal disc bulge at L4-5 and mild diffuse disc bulge and facet disease without significant central foraminal canal stenosis or focal disc protrusion and a tiny old Schmorl's node inferior endplate of L5 with minimal diffuse posterior disc bulge at L5-S1.

In a November 2, 2020 letter, Dr. Thomas recounted appellant's April 19, 2020 back injury and the medical treatment that she had received. He indicated that appellant was again seen on September 18, 2020 and had informed him that she had injured her back again. Dr. Thomas reported that appellant was referred to the hospital for evaluation and advised to follow-up with physical therapy and pain management.

On December 15, 2020 OWCP received appellant's completed development questionnaire. Appellant indicated that she notified her supervisors, R.W. and G.T., of her injury that same day. She also alleged that she had "agitated" her previous injury.

By decision dated January 5, 2021, OWCP accepted that the September 18, 2020 incident occurred as alleged and that a medical condition was diagnosed; however, it denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident.

On January 14, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 12, 2021. She testified that she had previous problems with her back, however, her symptoms were different after the September 18, 2020 work incident. Appellant noted that she felt something in her lower back shift and she was unable to walk due to pain.

Appellant submitted an emergency room registration form, a triage intake form, lab results, and a healthcare consent transfer form dated September 18, 2020.

OWCP also received a lumbar spine computerized tomography scan dated September 18, 2020, which noted findings of degenerative disc disease at L5-S1.

A duty status report (Form CA-17) dated January 12, 2021, containing an illegible signature, indicated that appellant could work part-time, limited-duty for 4.75 hours per day. It described the mechanism of injury as “uncomfortable chair injured employee’s back” and noted a diagnosis of lumbar spondylosis.

In a report dated January 27, 2021, Dr. Timothy Holt, an orthopedic surgeon, indicated that appellant was evaluated for low back pain that radiated down his bilateral legs. He reported that appellant sustained back injuries on June 23, 2019 and April 19, 2020 and described how the injuries had occurred. Dr. Holt also recounted that on September 18, 2020 appellant was answering telephones and trying to get comfortable in a chair when she felt something move in her back. Appellant noted that she changed chairs and the chair suddenly dropped down. On physical examination of appellant’s back, Dr. Holt observed positive straight leg raise, cram, and Laseague testing bilaterally. Sensory examination was intact. Dr. Holt reported that a lumbar spine MRI scan demonstrated degenerative disc disease at L4-5 and L5-S1. He assessed lumbar radiculopathy, cervicgia, lumbar spine instabilities, and intervertebral disc displacement of the lumbar region.

In a procedure note dated February 3, 2021, Dr. Vella noted that appellant underwent a lumbar discogram, which showed findings of lumbar pain and degenerative disc disease.

Dr. Holt also provided examination notes dated February 4 through April 21, 2021. He reported examination findings of limited range of motion and a shuffling gait. Dr. Holt assessed lumbar radiculopathy and other intervertebral disc degeneration of the lumbar region.

In a February 10, 2021 addendum note, Dr. Thomas described the June 23, 2019 and April 19, 2020 back injuries and the medical treatment that appellant had received. He noted that appellant worked for the employing establishment as an assistant rural carrier and was diagnosed with lumbar degenerative disc disease at L4-5 and L5-S1 according to an October 19, 2020 MRI scan and February 3, 2021 lumbar discogram. Dr. Thomas reported that “the injuries suffered as described in the note above can cause the disc disease diagnosed by the MRI and discogram.”

A March 15, 2021 lumbar spine MRI scan demonstrated chronically degenerated discs at L4-5 with minimal bulge, chronically degenerated disc protruding centrally at L5-S1, and endplate degeneration at L5-S1.

On April 21, 2021 appellant underwent anterior lumbar interbody fusion at L5-S1 and discectomy. OWCP received several documents related to the surgery, including lab results, pre-operative test results, an operative report, and a hospital discharge instruction sheet.

In a May 26, 2021 letter, Dr. Holt recounted that appellant was originally diagnosed with lumbar radiculopathy at L5-S1 with disc degeneration after a June 23, 2019 work injury. He also described that appellant “felt something twist in her lower back” when she bent down to organize packages and climbed three flights of stairs. Dr. Holt noted that a lumbar discogram reproduced her typical pain level at the L5-S1 level. He reported that appellant tried all conservative measures without success and eventually underwent an anterior interbody lumbar fusion. Dr. Holt opined: “I think that her injury is related to the September 18th incident.” He explained that appellant “may have been at more risk secondary to the previous injuries, but the 20th is the straw that broke the

camel's back" after a sudden jolt from a chair. Dr. Holt reported that it was "most likely" an aggravation of the preexisting injury. He noted diagnoses of lumbar radiculopathy, other spinal instabilities of the lumbar region, other intervertebral disc displacement in the lumbar region, and other disc degeneration in the lumbar spine.

In a May 27, 2021 report, Dr. Holt indicated that appellant was seen for post-operation follow-up evaluation. He recounted that appellant was walking better since the surgery, but still had some occasional burning sensation in her lower back. On physical examination, Dr. Holt reported limited range of motion and no clonus. Neurological examination was positive for numbness and weakness in the bilateral arms and legs. Dr. Holt diagnosed primary arthrodesis and recommended that appellant remain off work for another six weeks.

In a June 22, 2021 decision, OWCP's hearing representative affirmed the January 5, 2021 decision.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁹ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

⁴ The hearing representative noted that given the injury in the present claim appellant's claim should be administratively combined. The Board notes that OWCP subsequently administratively combined OWCP File Nos. xxxxxx088, xxxxxx425, and xxxxxx684, with the latter claim designated as the master file. The Board notes that appellant has another appeal pending under OWCP File No. xxxxxx088. That appeal will proceed under Docket No. 21-1195.

⁵ *Supra* note 1.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

time and place, and in the manner alleged.¹⁰ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹¹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.¹³ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁴

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 18, 2020 employment incident.

Appellant received medical treatment from Dr. Holt. In reports dated January 27 through May 26, 2021, he described that on September 18, 2020 appellant felt something move in her back when she tried to get comfortable in a chair at work. Dr. Holt discussed appellant's previous back injuries and provided current examination findings. In a May 26, 2021 letter, he indicated that he thought appellant's injury was related to the September 18, 2020 employment incident. Dr. Holt explained that appellant "may have been at more risk" after the previous injuries. He noted diagnoses of lumbar radiculopathy, other spinal instabilities of the lumbar region, other intervertebral disc displacement in the lumbar region, and other disc degeneration in the lumbar spine. Dr. Holt concluded that it was "most likely" an aggravation of the preexisting injury. The Board has held, however, that medical opinions that are speculative or equivocal in character are

¹⁰ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹¹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ *James Mack*, 43 ECAB 321 (1991).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

of limited probative value.¹⁶ Accordingly, these reports are insufficient to establish appellant's claim.

In a September 18, 2020 emergency room report, Dr. Lumpkin described that appellant "tweaked" her back at work. She reviewed appellant's history of back injuries and provided examination findings. Dr. Lumpkin assessed degenerative disc disease. Likewise, the examination notes by Dr. Vella and Dr. Guard reported diagnoses of lumbar radiculopathy and low back pain. However, these physicians did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁷ These reports, therefore, are insufficient to establish appellant's claim.

Appellant was also treated by Dr. Thomas. In a July 2, 2020 letter, Dr. Thomas described appellant's previous June 23, 2019 and April 19, 2020 back injuries and reviewed the medical treatment that she had received. In a November 2, 2020 letter, he indicated that he treated appellant on September 18, 2020 because she had injured her back again. In a February 10, 2021 addendum, Dr. Thomas reported that "the injuries suffered as described in the note above can cause the disc disease diagnosed by the MRI and discogram." While he provided an opinion on causal relationship, Dr. Thomas did not definitively relate appellant's current lumbar condition to the September 18, 2020 employment incident. He did not describe the accepted September 18, 2020 employment incident, nor provide any explanation of how the specific incident caused or contributed to appellant's current lumbar condition. The Board has held that medical opinion evidence should reflect a correct history and offer a medically sound explanation of how the specific employment incident or work factors, physiologically caused injury.¹⁸ These reports, therefore, are insufficient to establish appellant's claim.

OWCP also received a series of diagnostic tests. The Board has held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.¹⁹

¹⁶ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁷ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁹ *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

Appellant also submitted a Form CA-17 dated January 12, 2021 containing an illegible signature. However, this report is of no probative value since reports lacking proper identification do not constitute probative medical evidence.²⁰

As there is no medical evidence of record establishing that appellant's lumbar condition was causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted September 18, 2020 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 18, 2020 employment incident.

²⁰ A.W., Docket No. 21-0298 (issued August 26, 2021); C.B., Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board